



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

1100 Commerce Street

Dallas, Texas 75242

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: January 19, 2011

Release Number: **201115025**

Release Date: 4/15/2011

LEGEND

ORG = Organization name XX = Date Address = address

ORG
ADDRESS

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX. You have agreed to this adverse determination by signing Form 6018.

Our adverse determination was made for the following reasons:

Your activities serve the private benefit of your founder and related individuals. Thus, your activities do not serve any charitable or educational purposes.

Additionally, you failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3).

Therefore, you no longer meet the requirements of IRC section 501(c)(3) and Treas. Reg. section 1.501 (c)(3) -1(d) in that you failed to establish that you are operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. Those returns should be filed with the appropriate Service Center.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit of declaratory judgment in the United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate office located nearest you by calling (904) 665-1000 or by writing to:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can, however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

If you have any questions in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
7850 SW 6th Court, Plantation, FL 33324

March 16, 2010

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:
Publication 892,
Publication 3498
Report of Examination

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit 990
Name of Taxpayer ORG EIN		Years Beginning 01/01/20XX

LEGEND

ORG = Organization name XX = Date Address = address State = state
Country = country President = president BM-1, BM-2, BM-3 & BM-4 = 1ST,
2ND, 3RD & 4TH BM CO-1 THROUGH CO-9 = 1ST THROUGH 9TH COMPANIES

The Examination of ORG

ORG (hereafter referred to as ORG) is a State, non-profit corporation which alleged organization for the purposes of achieving world peace through international understanding via international student exchange, to provide scholarships and work studies programs to qualified students. ORG never filed Forms 990.

This report details the Service's findings resulting from its examination of ORG.

Issues

1. Whether ORG qualifies for exemption under Internal Revenue Code §501(c)(3):
 - a) Whether ORG engaged primarily in activities that accomplish an exempt purpose?
 - b) Whether any part of net earnings of ORG inured to the benefit of any private shareholder or individual?
 - c) Whether ORG was operated for the purpose of serving private rather than public interests?
2. Whether ORG is an alter-ego or sham entity created by and for the benefit of President, operated for the purposes of sheltering from taxation income from yet another of his alter-ego or sham entities (CO-1 hereafter referred to as CO-1), to launder monies acquired by President through the practice of borrowing under other names, and to hide real estate, personal property and cash from his Personal Bankruptcy Trustee.
- 3) Whether excise taxes under Internal Revenue Code §4958 should be assessed with respect to funds which were deposited in the ORG bank account and subsequently spent or withdrawn for personal purposes by President or BM-1?

Facts

Exhibit A provides copies of the Internal Revenue Service correspondence requesting that Exempt Organization file the Form 990 for the tax periods ending 12/31/20XX, 12/31/20XX and 12/31/20XX. ORG failed to respond to the Internal Revenue Service correspondence regarding Form 990 filing requirement or file Forms 990 for the tax periods ending 12/31/20XX, 12/31/20XX and 12/31/20XX.

ORG has not filed Form 990 for any year since inception in 20XX through present, though income per bank deposits and assets have far exceed the filing requirement. President has not filed his individual tax returns since 19XX. CO-1 did not file tax returns until after the Service issued

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notification of examination regarding ORG. Following notification for ORG examination, delinquent returns were filed for tax years 20XX through 20XX which claimed that a large (\$\$) capital loss occurred in 19XX, eliminating potential corporate taxes. The only documentation presented to verify the loss were copies of e-mail correspondence and 3 stock certificates. No cancelled checks were kept and there is no evidence that necessary investment principle existed or was ever reported on any tax return. Furthermore, a similar certificate, presumably created by President, was present in the organizational documentation of ORG granting membership to President's mother in ORG, signed by President.

President and BM-1 signed all checks written out of ORG and CO-1 bank accounts. CO-1 lists as its sole shareholder of record, BM-2, President's 89 year old mother who has been living in Country for over 10 years. No individual tax returns have been filed by BM-2 either, though she is a United States Citizen and owns, or is nominee for, extensive real estate investments and CO-1.

President and BM-1 (President's girlfriend) have been living in a house which President purchased in the name of the charity (ORG), for \$\$ in 20XX, which they claim was purchased with the intent of housing foreign students. Automobiles purchased on President's personal credit cards, were titled in the name of ORG as well. President's bankruptcy trustee sought to reposes these vehicles unsuccessfully, and then settled President's personal bankruptcy for a payment of \$\$ made by President in 20XX.

President signed checks from the account CO-1 to ORG. Total deposits into the only known account bearing the ORG name were as follows: \$\$ in 20XX and \$\$ in 20XX. In early 20XX the ORG account was closed and other entities' accounts were used for all transactions.

President filed for personal chapter 7 bankruptcy in 20XX, with \$\$00 in unsecured debt. Loan documents were furnished during examination which state CO-1 lent the \$\$ to ORG for the purchase of the home on Address and \$\$ to President to settle his bankruptcy. However, these loans did not have any repayments, repayment schedule and were not recorded with state or local governing authorities. Neither President, nor ORG had any known sources of income with which to repay these loans. Attempting to classify these transfers as loans is in the (self-serving) interest of President because loans are not treated as taxable income.

Large, unusual and questionable wire transfer was made from ORG account to account in Country. \$\$ was wired (memo Hsbccchhh) on 09/01/20XX from the ORG account. \$\$ was withdrawn from CO-1 bank account on 03/31/20XX and \$\$ from CO-1 account on 04/21/20XX. Neither President, nor his representative, BM-3 has furnished explanations or foreign bank account records, though requested in writing.

ORG did not file Employment Tax Returns or Forms 1099.

Organizational History

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Articles of Incorporation were filed in the State of State for ORG on June 30, 20XX naming BM-2 (President's mother) as the registered agent. ORG (hereafter referred to as ORG) was set up as a not-for-profit corporation for the stated purposes to achieve world peace through international understanding via international student exchange to provide scholarship & work studies programs to qualified students.

On September 30, 20XX an amendment to the Articles of Incorporation was filed to add standard 501(c)(3) verbiage. This document was signed by President as the president of ORG. A second amendment to the Articles of Incorporation, also signed by President as the president of ORG, was filed on January 23, 20XX to add a required clause that "Upon dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose..."

On November 25, 20XX the IRS received Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, signed by President as the president of ORG. All four members of the governing body; President, BM-1 (President's girlfriend), BM-2 and BM-4 were addressed at Address, City, State (Address). The application stated these individuals would not be compensated. The attachment to Form 1023 proposed that ORG would award scholarships to students attending colleges or universities of \$ to \$ to help decrease financial barriers to higher education. The attachment designated that the only officer would be President, president and that the other three individuals comprised the board of directors. ORG was to be funded through the contributions of caring individuals, concerned groups and conscientious corporations.

Activity Description

There is no evidence that any charitable activities were ever conducted by ORG. The power of attorney used the word "sham" in his description of ORG. The only students who received any funds were close relatives of President and these totaled only a few thousand dollars.

In August 20XX, following ORG incorporation, land was purchased under ORG's name at Address, City, State for the stated purpose of building housing for students. Purchase was made using a combination of funds transferred from CO-1 and an external loan. No housing for student was ever built. No affiliations with any students, schools or programs were shown to have existed.

In December 20XX, a \$ single family residence was purchased in the name of ORG in which President and BM-1 have lived since. The purchase was made without any bank loan.

President's history shows a clear pattern of opening gratuitous tangles of corporations and of not filing any individual or corporate tax returns. The addition of a tax exempt charity to the milieu adds layers of complication and protection for President. This scheme distorts the financial and tax

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consequences to President and to the respective entities. President has not filed any Forms 1040 since 19XX. State State business records shows that President has created a myriad of corporate entities and partnerships over the past several years of which he was listed as an officer or director. Among the entities verified by documents containing his signature or address are: CO-2 (President was listed as President), CO-3 (President was Incorporator and Director), CO-4 (Director), CO-5 (Treasurer), CO-6. (GP), CO-7 (Registered Agent and former spouse VP was listed as VP), CO-8 (GP), CO-9 (DP) and others. There are more entities over which President asserts control, though he denies ownership. He signed checks for over \$\$ from the account of CO-1 (hereafter referred to as CO-1), to the account of ORG Scholar and additionally wired hundreds of thousands of dollars to a bank in Country. He and his girlfriend BM-1 were the only ones initiating transactions in the accounts of CO-1 and ORG Scholar Foundation.

It also enables President to use self-serving documentation when it is convenient for him such as loan documents he creates to eliminate potential tax adjustments.

Law and Analysis

Internal Revenue Code §501(c)(3) exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

An organization must establish that it serves a public rather than a private interest and “that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.” Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an “advantage; profit; fruit; privilege; gain; [or] interest.” Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income,

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receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Treas. Reg. § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

Section 4958(a)(1) of the Code imposes on each excess benefit transaction a tax equal to 25 percent of the excess benefit (the "first tier tax"). This tax must be paid by any disqualified person with respect to such transaction.

Unless the exempt organization can establish that it provided the economic benefit in exchange for consideration other than the performance of services (for example, a bona fide loan), failure to satisfy the written contemporaneous substantiation requirement results in the economic benefit to be treated as an "automatic" excess benefit transaction without regard to whether: (i) the economic benefit is reasonable, (ii) any other compensation the disqualified person may have received is reasonable, or (iii) the aggregate of the economic benefit and any other compensation the

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disqualified person may have received is reasonable. See Automatic Excess Benefit Transactions Under IRC 4958.

Section 4958(b) of the Code provides that where an initial tax is imposed, but the excess benefit involved in such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the "second tier tax").

Section 4958(c) of the Code, in part, defines "excess benefit transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

Section 4958(d)(1) of the Code provides that if more than one person is liable for any tax imposed by section 4958(a) or (b), all such persons shall be jointly and severally liable for such tax.

Section 4958(e) of the Code defines "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction.

Section 4958(f)(1) of the Code defines "disqualified person" as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35 percent controlled entity.

Section 53.4958-3(b)(1) of the regulations provides that a person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a disqualified person with respect to any transaction with the same organization. A person's family includes the person's spouse.

A disqualified person who is liable for tax imposed by section 4958 is required to file Form 4720 Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Code. IRC § 6011(a)

Form 4720 must be filed annually reporting the excess benefit transactions that occurred which give rise to the tax liability under IRC 4958. Treas. Reg. § 53.6011-1(b).

If a disqualified person required to file Form 4720 did not file Form 4720 on or before the required due date, including extensions of time, a penalty of 5% of the amount of the correct tax under IRC 4958 would apply if the failure to file was not more than one month. For each additional month

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that the disqualified person (or the organization manager) did not file Form 4720, a penalty of 5% per month applies, but not exceeding 25% in total. If the disqualified person (or the organization manager) establishes that the failure to file was due to reasonable cause and not due to willful neglect, the penalty would not apply.ⁱ See IRC 6651(a)(1); Reg. 301.6651-1(a)(1).

If a disqualified person required to file Form 4720 did not pay the excise taxes that should have been reported on Form 4720 on or before the required due date, including extensions of time, a penalty of 1/2% of the amount of the correct tax under IRC § 4958 would apply if the failure to pay was not more than one month. For each additional month that the disqualified person (or the organization manager) did not pay the required excise taxes, a penalty of 1/2% per month applies, but not exceeding 25% in total. If the disqualified person (or the organization manager) establishes that the failure to pay was due to reasonable cause and not due to willful neglect, the penalty would not apply.ⁱⁱ See IRC § 6651(a)(3); Treas. Reg. § 301.6651-1(a)(3).

If a disqualified person (or an organization manager) required to file Form 4720 did not file Form 4720, the Service may prepare a substitute Form 4720. IRC § 6020(b); Treas. Reg. § 301.6020-1(b).

A substitute Form 4720 prepared by the Service is a valid Form 4720 for all legal purposes. IRC § 6020(b)(2); Treas. Reg. § 301.6020-1(b)(2).

If a disqualified person (or an organization manager) required to file Form 4720 did not file Form 4720, and the Service prepares a substitute Form 4720, the penalties for failure to file would not apply to the substitute Form 4720 but the penalties for failure to pay would apply. IRC § 6651(g); Treas. Reg. § 301.6651-1(g).

Taxpayer's Position

The Power of Attorney for ORG stated in his own words that the organization is a sham; that the taxpayer, President, and his family were led into creating the Exempt Organization by a defunct accounting firm which then promoted Exempt Organizations. The taxpayer claims that he tried to arrange scholarships but found the process too difficult and did not follow through.

President's main concern is that the home on Address and other land parcel were regrettably titled in the name of ORG, but that they are his personally. He would like to eliminate the exempt organization and keep its assets, provided he pays taxes attributable to the activities and distributions which were neglected due to this distorting arrangement.

Government Position

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ORG is not operated exclusively for charitable or educational purposes. An IRC section 501(c)(3) organization will only qualify for tax exempt status if it is organized and operated exclusively for charitable or educational purposes. The organization has not been able to produce any compelling evidence to show its activities discriminate to a charitable class or that it provides any education, support or instruction to individuals or the public on any useful and beneficial subjects. ORG has not carried out any the objectives listed in its Application for Exemption.

Both President and BM-1 are disqualified persons as to the EO under IRC § 4958(f)(1) and Treas. Reg. § 53.4958-3. President and BM-1 used the ORG bank account to pay personal credit cards, purchase and maintain real estate including the residence they consider their home. All ORG expenditures are subject to §4958, whether loan or other withdrawal. Their total withdrawals from ORG account of: \$ for 20XX and \$ for 20XX (ORG did not have a known bank account in 20XX) constitute excess benefit transactions for the following reasons: The organization maintained no compelling documentation evidencing its intent to treat any expenditures as wages. EO did not report the funds as compensation on an original or amended Form 990, Form W-2, or Form 1099 before the start of this examination, nor were funds reported as compensation on an original or amended Form 1040 before the start of this examination. Furthermore, EO did not establish that its failure to report the withdrawals as compensation was due to reasonable cause within the meaning of section 301.6724-1 of the regulations, nor did it provide any other contemporaneous evidence demonstrating that it approved the payments in accordance with established procedures set forth in section 53.4958-4(c)(3)(ii) of the regulations.

No bonafide exempt function expenses were verified paid. The EO did not satisfy contemporaneous substantiation requirements under section 53.4958-4(c)(3) of the regulations for any distributions. "Loans" from CO-1 were not reflected on CO-1's (delinquent) Form 1120 balance sheets, nor were they recorded on Form 990, as required. No payments of interest or principal were made and taxpayers did not have any know sources of income with which to repay said loans.

Furthermore, in accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Conclusion

Based on the facts presented in this examination, ORG does not operate exclusively for exempt purposes, because it did not engage primarily in activities that accomplish an exempt purpose. ORG's principal activity is to act as a flow through or shell account for President. This activity does not achieve charitable or educational purposes.

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Additionally, the organization failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3).

Accordingly, it is determined that the tax exempt status of ORG should be revoked because it is not an organization described in IRC §501(c)(3), effective January 1, 20XX.

Form 1120 returns should be filed for the tax periods ending on or after 12/31/20XX.

Forms 4720 reporting the withdrawals from the ORG bank account in 20XX and 20XX as excess benefit transactions should be filed. Accordingly, the President and BM-1 are liable for the 25% excise tax under IRC § 4958(a)(1) and the 200% excise tax under IRC § 4958(b).